



815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000
www.aflcio.org

EXECUTIVE COUNCIL

RICHARD L. TRUMKA
PRESIDENT

Michael Sacco
Cecil Roberts
Nancy Wohlforth
Randi Weingarten
Patrick D. Finley
Ken Howard
Terry O'Sullivan
DeMaurice Smith
David Durkee
Harold Daggett
Harry Lombardo
Sara Nelson
Eric Dean
Richard Lanigan

ELIZABETH H. SHULER
SECRETARY-TREASURER

Robert A. Scardelletti
Leo W. Gerard
Rose Ann DeMoro
Rogelio "Roy" A. Flores
Newton B. Jones
James Boland
Lawrence J. Hanley
Sean McGarvey
D. Taylor
Bhairavi Desai
Dennis D. Williams
Lori Pelletier
Joseph Sellers Jr.
Robert Martinez

TEFERE GEBRE
EXECUTIVE VICE PRESIDENT

Harold Schaitberger
William Hite
Fred Redmond
Fredric V. Rolando
D. Michael Langford
Bruce R. Smith
Loretta Johnson
Laura Reyes
Kenneth Rigmaiden
Paul Rinaldi
Cindy Estrada
Marc Perrone
Christopher Shelton

Clyde Rivers
Gregory J. Junemann
Matthew Loeb
Diann Woodard
Baldemar Velasquez
Lee A. Saunders
James Callahan
J. David Cox
Stuart Appelbaum
Mark Dimondstein
Capt. Timothy Canoll
Jorge Ramirez
Lonnie R. Stephenson

March 11, 2016

VIA ECF and U.S. Mail

Mark Langer, Clerk of Court
United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
Room 5205
333 Constitution Avenue, NW
Washington, DC 20001

Re: *Bread of Life, LLC, d/b/a Panera Bread v. NLRB*, Nos. 15-1179, 15-1220
Oral Argument Not Yet Scheduled

Dear Mr. Langer:

Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28(f), Intervenor Bakery, Confectionary, Tobacco Workers and Grain Millers International Union, Local 70, AFL-CIO, CLC ("Local 70") submits for the Court's information the decision issued in *FedEx Freight, Inc. v. NLRB*, Nos. 15-1848, 15-1999, 15-1294, 15-2732, 2016 U.S. App. LEXIS 4221 (8th Cir., March 7, 2016).

In that decision, the Eighth Circuit upheld the National Labor Relations Board's formulation of the community of interest test for bargaining unit determinations set forth in *Specialty Healthcare and Rehabilitation Ctr. of Mobile*, 357 NLRB No. 83 (Aug. 26, 2011), enforced sub nom. *Kindred Nursing Ctrs. East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), as "a reasonable interpretation

of how the Board should apply section 9(b) [of the National Labor Relations Act] and decide on an appropriate unit[.]” *FedEx Freight*, 2016 U.S. App. LEXIS at *18. The Eighth Circuit explained that “the community of interest test [in *Specialty Healthcare*] does in fact compare the interests and characteristics of the workers in the proposed unit with those of other workers” and “[t]he factors listed by the Board [in *Specialty Healthcare*] question whether the employees in the proposed unit have characteristics that are ‘distinct’ and ‘separate[.]’” *FedEx Freight*, 2016 U.S. App. LEXIS at *12 (quoting *Specialty Healthcare*, 357 NLRB No. 83, slip op. 9, and citing *Blue Man Vegas LLC v. NLRB*, 529 F.3d 417, 421 (D.C. Cir. 2008)).

The Eighth Circuit’s decision in *FedEx Freight* is relevant to Local 70’s discussion of the Board’s *Specialty Healthcare* formulation of the community of interest test at pages 10 through 13, footnotes 2 and 3, and pages 22 through 24 of its brief in this case.

Sincerely,

/s/ Matthew J. Ginsburg

Matthew J. Ginsburg
815 Sixteenth Street NW
Washington, DC 20006
(202) 637-5397

cc: Timothy J. Ryan
Marni Von Wilpert